

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROWENA TACHIAS and MONIQUE
DERETA,

Plaintiffs,

v.

LOS LUNAS SCHOOLS BOARD OF
EDUCATION, BRYAN SMITH, in his
individual capacity and in his official capacity
as President for the Los Lunas Schools Board
of Education, ELOY GIRON, in his official
capacity as Vice President of the Los Lunas
Schools Board of Education, STEVEN
OTERO, in his official capacity as Secretary
of the Los Lunas Schools Board of Education,
FRANK OTERO, in his individual and
official capacity as a member of the Los
Lunas Schools Board of Education, P.
DAVID VICKERS, in his official capacity as
a member of the Board of Education, and
DANA SANDERS, in her individual
capacity,

Defendants.

Civil Action No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(42 U.S.C. § 1983)**

COMPLAINT

Plaintiffs Rowena Tachias and Monique Dereta for their Complaint against Defendants Los Lunas Schools Board of Education, Defendant Board Members Bryan Smith, Eloy Giron, Steven Otero, Frank Otero, P. David Vickers, and Dana Sanders, former Superintendent of the Los Lunas Schools Board of Education, allege as follows:

INTRODUCTION

1. Plaintiffs Rowena Tachias and Michelle “Monique” Dereta bring this lawsuit to vindicate and protect their rights under the First Amendment to the United States Constitution. Defendants retaliated against Plaintiffs for exercise of their First Amendment free-speech rights by purportedly trademarking “Los Lunas Schools” and issuing a cease and desist letter to Plaintiffs in relation to a Facebook discussion page that Plaintiffs administer: “Los Lunas School District Parent Discussion Page.”

2. Neither Ms. Tachias nor Ms. Dereta have offered or purported to offer educational services that would infringe upon the trademark of Defendant Los Lunas Schools Board of Education (“LLSD” or the “Board”), if the trademark were valid and enforceable. Rather, they administer online social networking services for LLSD parents, stakeholders, constituents, and community members to discuss LLSD via the “Los Lunas School District Parent Discussion Page” on Facebook.

3. Defendants’ disapproval of certain speech on the Los Lunas School District Parent Discussion Page led them to attempt to trademark “Los Lunas Schools” for the specific purpose of chilling the First Amendment free-speech rights of Ms. Tachias and Ms. Dereta, as well as those of the public who engage in online social networking on the page. Defendants then sent a cease-and-desist letter to Ms. Tachias and Ms. Dereta asserting that “you or others you communicate with made unauthorized use of the Los Lunas Schools trademark for purposes of criticizing and providing false information about the District [sic] Los Lunas School District Parents [sic] Discussion Facebook page and use in other social media,” and demanding that Plaintiffs “CEASE AND DESIST from any . . . statements relating to the use of the term ‘Los Lunas Schools’.” Ex. 1, Attached.

4. The Framers of our Constitution embraced a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). The Defendants lack the authority to quash the speech of those who participate in online social networking and discussion on the Los Lunas School District Parent Discussion Page, “[t]he sort of robust political debate encouraged by the First Amendment” – debate that is “bound to produce speech that is critical of those who hold public office.” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 51 (1988).

5. The Defendants’ trademark is unenforceable. However, the threat of enforcement has chilled and threatens to chill Ms. Tachias’s and Ms. Dereta’s expressive activity. Ms. Tachias and Ms. Dereta bring this action to enforce this constitutional commitment, and to ensure that the public remains free to question the government’s conduct and to discuss the business of the LLSD amongst LLSD parents, stakeholders, and the community. Accordingly, they ask this Court to declare that the Defendants’ attempted enforcement of their trademark rights, if any, against them violates the First and Fourteenth Amendment, and to enjoin the Defendants taking enforcement action against Ms. Tachias and Ms. Dereta.

JURISDICTION AND VENUE

6. Ms. Tachias and Ms. Dereta bring claims under 42 U.S.C. §§ 1983 and 1988, and the First and Fourteenth Amendments to the U.S. Constitution.

7. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

8. Venue is proper in this district because Defendants are citizens of New Mexico, maintain their place of business in New Mexico, and because the events giving rise to this claim occurred within this district.

PARTIES

9. Plaintiff Rowena Tachias is a citizen and resident of both Texas and New Mexico. Her formal mailing address is in Graford, Palo Pinto County, Texas. Ms. Tachias also resides part of the year in Bosque Farms, Valencia County, New Mexico, and she maintains a home and business as well as property in three New Mexico counties. Three of her children went to school in the Los Lunas school district, the youngest of which graduated in 2015. Ms. Tachias's daughter is currently a school district employee.

10. Plaintiff Michelle "Monique" Dereta is a citizen and resident of New Mexico. She resides in Bosque Farms, Valencia County, New Mexico. Three of her children went to school in the Los Lunas school district. She currently has four grandchildren enrolled in the school district.

11. Defendant Los Lunas Schools Board of Education is the duly elected board of education for the school district located in Los Lunas, New Mexico.

12. Defendant Bryan Smith is the president of the Los Lunas Schools Board of Education. Plaintiffs sue Defendant Bryan Smith in his official capacity as Board member and President. Plaintiffs also sue Defendant Bryan Smith in his individual capacity, because he intentionally or maliciously violated Ms. Tachias's and Ms. Dereta's constitutional rights, or acted with indifference or a reckless disregard for Ms. Tachias's and Ms. Dereta's constitutional rights.

13. Defendant Eloy Giron is the vice president of the Los Lunas Schools Board of Education. Plaintiffs sue Defendant Eloy Giron in his official capacity as Board member and vice president.

14. Defendant Steven Otero is the secretary of the Los Lunas Schools Board of Education. Plaintiffs sue Defendant Steven Otero in his official capacity as Board member and secretary.

15. Defendant Frank Otero is a member of the Los Lunas Schools Board of Education. Plaintiffs sue Defendant Frank Otero in his official capacity as Board member. Plaintiffs also sue Defendant Frank Otero in his individual capacity, because he intentionally or maliciously violated Ms. Tachias's and Ms. Dereta's constitutional rights, or acted with indifference or a reckless disregard for Ms. Tachias's and Ms. Dereta's constitutional rights.

16. Defendant P. David Vickers is a member of the Los Lunas Schools Board of Education. Plaintiffs sue Defendant P. David Vickers in his official capacity as Board member.

17. Defendant Dana Sanders was the superintendent of the Los Lunas Schools Board of Education from July of 2014 until on or about August of 2020. Plaintiffs sue Defendant Dana Sanders in her individual capacity, because she intentionally or maliciously violated Ms. Tachias's and Ms. Dereta's constitutional rights, or acted with indifference or a reckless disregard for Ms. Tachias's and Ms. Dereta's constitutional rights.

FACTS

I. The Los Lunas School District Parent Discussion Page.

18. In 2010, a Los Lunas community member started an online social networking service via a Facebook discussion page for LLSD parents and stakeholders, for the purpose of allowing discussion of the upcoming elections to the LLSD Board of Education in the spring.

19. Prior to 2011, public comment was welcomed at LLSD Board meetings. Any member of the public who attended the Board meetings could speak during the public comment portion of the meetings on any topic for three minutes or less, and the Board could address that member's comments.

20. On December 14, 2010, parents of Valencia High School football players attended the LLSD Board meeting and accused the Board and LLSD employees of violating the students' rights by interrogating the students about the hazing allegations in the presence of New Mexico

State Police and without their parents present. The parents at the meeting directly criticized LLSD officials for the interrogations, including criticizing directly then-Superintendent Bernard Saiz's handling of the investigation and Mr. Saiz's statements afterwards about the investigations. During these comments, members of the public in attendance nodded their heads and even applauded in response to the LLSD parents' comments.

21. After this meeting, in 2011, the LLSD Board began efforts to limit the public comment portion of their Board meetings to chill speech critical of LLSD and the Board like that which occurred in the December 2010 Board meeting.

22. In early 2011, the Los Lunas community member who started the Facebook page posted that he was going to shut down the page, because his wife, who was an LLSD teacher, had been threatened with termination because of her connection to the Facebook page.

23. In response to that post, on February 9, 2011, Ms. Tachias and Ms. Dereta created the Los Lunas School District Parent Discussion Page and took on the roles as the administrators to continue to facilitate online social networking services for LLSD parents, stakeholders and the LLSD community. The first post that they posted on that day made clear that the page was intended to be an online social networking service for discussion of issues of concern for LLSD parents and stakeholders:

This page is for Los Lunas School District Parents/residents to openly discuss issues/ideas that concern the safety/welfare and the education of the kids in this district. This is an opportunity to share information/questions that will hopefully reach the FB pages of our school board members....so if you know them, invite them. Thanks and lets all play nice with each other, we can be civil grown ups.

24. In October 2011, the Board instituted a policy at LLSD to limit public comment at its monthly Board meetings. Rather than allow public comment at the Board meetings as it had in the past, the new policy significantly curtailed the public's ability to comment. Under the policy, in order for the public to comment at a Board meeting, the topic about which the public member

wants to comment must be on the agenda. And if it is on the agenda, the public member will be permitted to talk only if “they have filled out the ‘Public Comment Form.’” *Policy 2.8.8 Public Address to the Board*, Los Lunas Schools, https://www.llschools.net/school_board/policies/section_i_i_board_governance_and_operations (last visited Jan. 21, 2021). If the topic about which the public member wants to comment isn’t on the agenda, then that person must submit in writing to the Superintendent the topic ten days before the meeting, and the Board President and Superintendent decide whether to add that topic to the agenda; if they don’t, then rather than be afforded an opportunity to speak publicly about it, “the individual who requested that the item be placed on the agenda will be contacted [privately] and directed to the appropriate school department that is best suited to handle such items.” *Id.*¹

25. By the fall of 2011, the Los Lunas School District Parent Discussion Page had become popular with LLSD parents, and had amassed approximately 180 members.

26. In the fall of 2011, Ms. Tachias received a telephone call from then-Board President Charles Tabet, inviting Ms. Tachias and Ms. Dereta to meet with him and (then) Superintendent Bernard Saiz at his office. During the meeting, Mr. Tabet told Ms. Tachias that the Los Lunas School District Parent Discussion Page was “poisonous,” and directed Ms. Tachias and Ms. Dereta to take down the page immediately. When Ms. Tachias refused, she was shown a list of LLSD employees who were members of the Los Lunas School District Parent Discussion Page, and told that, if they refused to take down the page, LLSD would maintain a list of its employees who were members – implicitly threatening retaliation against any such LLSD-employee members.

¹ From the 2011 change to the Board’s public comment policy until December 20, 2017, only 11 people had requested to speak in the public comment portion of Board meetings. See Deborah Fox, *Los Lunas Schools limits public comments*, News-Bulletin.com, http://www.news-bulletin.com/news/los-lunas-schools-limits-public-comments/article_98670456-e5a9-11e7-b25f-e768a7cd4a22.html (last visited Jan. 26, 2021).

27. Immediately after the 2011 meeting with Mr. Tabet and Mr. Saiz, Ms. Dereta received messages from members of the Los Lunas School District Parent Discussion Page informing her that, because of their employment with LLSD, they had to leave the page, or they would be fired.

28. Throughout Ms. Tachias's and Ms. Dereta's facilitation of the Los Lunas School District Parent Discussion Page online social networking service, in Facebook's "About" description, the page states that it is "[a] page that allows LLSD parents, grandparents, guardians and taxpayers to discuss, question, comment, praise, criticize, seek advice/opinion and share topics related to the LLSD, education in general, be it positive or negative."

29. Initially, the Los Lunas School District Parent Discussion Page was public. After Mr. Saiz and Mr. Tabet demanded that Ms. Tachias and Ms. Dereta take down the page and told them that Mr. Saiz and Mr. Tabet would maintain a list of LLSD employees who are members of the page, Ms. Tachias and Ms. Dereta, under the options that Facebook had available at the time, "closed" the Los Lunas School District Parent Discussion Page, meaning that only page members could view the members of the page and the discussion on the page, and closing the page allowed a person access to the page and to view the members only if another page "member" sent an "invite" to grant a person access to the page. As Facebook evolved, Ms. Tachias and Ms. Dereta then changed membership acceptance to "Administrator approval only." Currently, before admission, members of the public who wish to join the Los Lunas School District Parent Discussion Page are required to answer three questions: (1) Are you a student?; (2) I understand this is **NOT** an "official" LLSD sponsored or regulated page; (3) Tell us why you want to join the group. These questions ensure that persons admitted to the Los Lunas School District Parent Discussion Page are not students and have an interest in LLSD.

30. The majority of the content on the Los Lunas School District Parent Discussion Page online social networking site is user-generated content that LLSD parents, stakeholders, and community members believe may be important to others. The members engage actively in speech and expressive activity related to the LLSD. On any given day, multiple members post on the Los Lunas School District Parent Discussion Page, which posts collect comments from members. For example, on January 11, 2021, there were six posts to the Los Lunas Parent Discussion Page, only two of which were posted by Ms. Tachias or Ms. Dereta.² One of the posts, not posted by either Plaintiff, asked if there was a “Senior 2021 parents Facebook group,” and said that, if not, the member was thinking about creating one; 25 comments appeared in response to this post within only two days, 43 members reacted with emoji’s and over 1800 members viewed the post.

II. Report of LLSD Principal Threatening LLSD Student

31. On October 12, 2018, a community member posted on the Los Lunas School District Parent Discussion Page that Jason Baca, principal of Valencia Middle School – a school within LLSD – threatened a student, including Mr. Baca’s threat to bring his son to fight the student, and threatened the student “not to tell anybody what happened not even his parents.” As of October 18, 2018, the post elicited 181 comments from other Los Lunas School District Parent Discussion Page members. Jason Baca, in addition to being the Valencia Middle School principal, is also the brother of both LLSD Deputy Superintendent, Brian Baca, and LLSD CFO, Claire Cieremans, both of whom worked side-by-side with then-Superintendent Dana Sanders in the LLSD central office.

32. On October 15, 2018, then-LLSD Superintendent Dana Sanders sent a group text message to the then-LLSD Board members. The text message states that she has contacted an

² The two posts were “shares” by Ms. Dereta of posts from the Facebook page “LLMS Tigers,” which page states that it is an “Education Website” of Los Lunas Middle School.

attorney who performed work for LLSD, “Andy Sanchez,” who is “looking into some things,” and that Superintendent Sanders is “looking at trying to figure out how to Trademark the Los Lunas Schools name. I want that removed from their FaceBook [sic] page.”

33. On October 15, 2018, then-LLSD Board Member Brandon Campanella responded in the group text with Board members to Superintendent Sanders’s text about trademarking Los Lunas Schools to remove the Facebook post: “That is a great idea.”

34. After the student’s parents read the post, they called the student’s school, and the story was picked up by news media, including KRQE news. In response to an inquiry from KRQE, LLSD issued a statement saying that LLSD would not comment on personnel issues to the media, “and wanted to point out that the post was on a social media account created by ‘disgruntled parents.’” *Valencia Middle School Parents Allege Principal Threatened Student*, KRQE, Oct. 18, 2018, *available at* <https://www.krqe.com/news/new-mexico/valencia-middle-school-parents-allege-principal-threatened-student/> (last visited Jan. 21, 2021).

35. On October 19, 2018, Superintendent Sanders sent a “Board Update” to then-Board members Defendant Bryan Smith, Defendant Frank Otero, Sonya C’Moya, Brandon Campanella, and Milo Moody. The update states:

I am sure that some of you have followed at least some of what is showing upon on the Los Lunas Schools parent discussion page, or as many have labeled it *‘THE HATERS PAGE’*. At this point, it is unfortunate, but we will never be able to get to the bottom of what actually happened. No one, including the parent, contacted the school or Central Office until Sunday at 10:00 pm, and that was in an email. The incident occurred on Thursday and went crazy on the Facebook Page on Friday and during the weekend.

The “Board Update” continues that, “[i]n addition, statements were being made on the page about a protest at last night’s middle school football game between Los Lunas and Valencia Middle School, and possibly the board meeting.”

36. On October 30, 2018, Superintendent Sanders sent a letter to the parents of all LLSD students, regarding “Social Media Concerns,” purportedly “to better serve and inform parents/guardians regarding social media accounts that are not associated with the Los Lunas Schools.” The letter states that “[t]here are several social media accounts namely on FaceBook [sic] and Twitter that are not connected or affiliated with the Los Lunas Schools.” The letter discusses only the Los Lunas Schools Parent Discussion Page, however, leveling the charge, among others, that, “[i]n some instances, such as the *Los Lunas Schools Parent Discussion Page* on FaceBook [sic], there is often inaccurate information, gossip, half-truths, and information posted. This page has become an outlet to circumvent the process to resolve issues and come to resolution regarding concerns.”

III. Application for Trademark of Los Lunas Schools

37. On October 22, 2018, four days after news media reported about the post of Jason Baca’s threats on the Los Lunas School District Parent Discussion Page, and three days after Superintendent Sanders’s update to the Board, Superintendent Sanders filed LLSD’s application, serial No. 88164510, to trademark “Los Lunas Schools.” *See* Ex. 1.

38. The Identification for the trademark application lists that the mark would be trademarked for: “Education services, namely, providing pre-kindergarten through 12th grade (pre-K-12) classroom instruction.” *Id.*

39. The Literal Element in the application is “Los Lunas Schools.” *Id.*

IV. Trademark Issue of Los Lunas Schools

40. On July 9, 2019, the United States Patent and Trademark Office registered the “Los Lunas Schools” mark as Registration No. 5,798,193. Ex. 2.

41. The mark was registered as a service mark in connection with: “CLASS 41: Education services, namely, providing pre-kindergarten through 12th grade (pre-K-12) classroom instruction.” *Id.*

42. The mark’s owner is: “Los Lunas Schools (NEW MEXICO Public School), AKA Los Lunas Public Schools, LLS.” *Id.*

V. LLSD’s Attempts to Chill Ms. Tachias’s and Ms. Dereta’s Expressive Rights

43. On August 2, 2019, Superintendent Sanders sent a “Board Update for the Week of July 29 – August 2, 2019,” to then-Board members Defendant Smith, Defendant Frank Otero, Ms. C’Moya, Mr. Campanella, and Mr. Moody. The first bullet point on this August 2 “Board Update” states that, “since we have been issued a Trademark for Los Lunas Schools,” Superintendent Sanders asked Jacque Archuleta-Staehlin – who worked for the same law firm as Andy Sanchez, to whom Superintendent Sanders referred in the October 15, 2018 text message – to write cease and desist letters to the “owner of the Los Lunas School Parent Discussion Page.” Superintendent Sanders stated: “I expect that this will cause somewhat of a disturbance on that page. If you have objections to me sending the letter, please let me know as soon as possible.”

44. On August 23, 2019, Superintendent Sanders sent a “Board Update for the Week of August 19-23, 2019,” which was labeled **CONFIDENTIAL**.³ The first bullet point in this August 23 “Board Update” states that Superintendent Sanders “received the Cease and Desist letter from our attorney. I have personalized two letters for the individuals who ‘run’ the page. I plan to send the letters out to them on Tuesday afternoon. Please let me know if you have objections to me sending the letter before Tuesday. I have attached a copy of the letter to this update.”

³ Several of these “Board Updates” were received in response to a request under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12 (“IPRA”). The majority of them had black redaction rectangles exactly where this August 23, 2019 update is marked as **CONFIDENTIAL**.

45. On August 29, 2019, Superintendent Sanders sent to Board members the “Board Update for the Week of August 26-30, 2019,” which was labeled **CONFIDENTIAL**. This “Board Update” states: “The Cease and Desist letters to the ‘owners’ and ‘operators’ of the ‘Haters’ page were sent out on Thursday. I expect there will be quite an uproar from people that contribute to the page. Thank you for all of your support through this process.”

46. Also, on August 29, 2019, Superintendent Sanders sent via United States Postal Service Certified Mail the identical cease and desist letters to Ms. Tachias and Ms. Dereta.

47. In the cease-and-desist letters, Superintendent Sanders writes that the purpose of the letter is to inform Ms. Tachias and Ms. Dereta that “Los Lunas Schools reserves all rights to and is the owner of the trademarked term [sic] ‘Los Lunas Schools’ that was trademarked on July 9, 2019 and is registered under U.S. Trademark Registration No. 5, 798,193.” A copy of the trademark was attached to the cease-and-desist letters. It further states:

It has been brought to our attention that you or others you communicate with made unauthorized use of the Los Lunas Schools trademark for purposes of criticizing and providing false information about the District [sic] Los Lunas School District Parents [sic] Discussion Page. Facebook page and use in other social media of the term “Los Lunas Schools” is confusing and misleading to those individuals who are searching for information regarding the school district and its operations and is considered an infringement upon the District’s intellectual property rights.

On behalf of the District, I therefore ask you to CEASE and DESIST from any and all unlawful acts and trademark infringement with regards to your actions, statements relating to the use of the term “Los Lunas Schools” or other aka names listed on the trademark.

Failure to comply with this notice will confirm your complicity and force the District to take further legal action including filing of a civil lawsuit seeking monetary damages, court and attorneys’ fees, [sic] incurred as a direct result of your unlawful actions of trademark infringement.

The District will do all that is necessary to protect its rights regarding its registered trademark.

THEREFORE, you are on notice to immediately CEASE and DESIST from further acts of infringement within 10 calendar days of today's notice and return the signed written assurance below that you will refrain from any and all further acts of infringement including removal of the unauthorized social media account on Facebook.

Ex. 3, at 1.

48. On August 31, 2019, upon receiving the cease-and-desist letter, Ms. Tachias and Ms. Dereta immediately changed the name of the Los Lunas School District Parent Discussion Page to "PARENT DISCUSSION PAGE OF LOCAL PUBLIC SCHOOLS."

49. After receiving the letter, Ms. Tachias was forced to engage the services of attorney Jose Garcia, Esq., to respond to the cease-and-desist letter.

50. On September 19, 2019, Mr. Garcia wrote a letter to the attorney who Superintendent Sanders copied on the cease-and-desist letter to Ms. Tachias and Ms. Dereta. Among other things, Mr. Garcia advised the attorney that the breadth with which Superintendent Sanders and LLSD contended that the "Los Lunas Schools" service mark in education could be enforced lacks support in the law. Mr. Garcia also asserted that, to the extent LLSD properly was granted a trademark, even that education service mark could possibly be infringed by the Los Lunas School District Parent Discussion Page, enforcement to require Ms. Tachias and Ms. Dereta to take down the page and prohibit them and others from engaging in speech about LLSD violates Ms. Tachias's and Ms. Dereta's, and others', First Amendment rights. Mr. Garcia invited the attorney to contact Ms. Tachias directly to discuss revoking the cease and desist letter and resolving the dispute. No one from LLSD or the Board accepted Mr. Garcia's invitation to resolve the matter.

51. After becoming further informed of their First Amendment rights, on September 30, 2019, Ms. Tachias and Ms. Dereta changed the name of the Los Lunas School District Parent Discussion Page back to "Los Lunas School District Parent Discussion Page."

52. On September 30, 2019, Ms. Tachias and Ms. Dereta revised the “about” section of the Los Lunas School District Parent Discussion Page to make clear that the page “is not in any way ‘Officially’ sponsored by, represents or by any other means is meant to confuse, mislead or misrepresent any local Public School District in Valencia County.”


53. On or about October 10, 2019, in response to media inquiry about the dispute over the trademark, LLSD issued a “Media Statement” about the Los Lunas School District Parent Discussion Page and its trademark. The Media Statement states that the Los Lunas School District Parent Discussion Page “site is one of the first pages that appears” when a person searches Facebook, and that it “is often mistaken as a forum that is monitored and approved by district officials.” The Media Statement states that the information on the page “causes issues with the orderly operations of individual schools and the district.”

54. From October 2019 to the present, attorneys representing Ms. Tachias and Ms. Dereta have engaged with multiple attorneys for LLSD and LLSD officials in attempts to resolve the dispute between Ms. Tachias, Ms. Dereta, and Defendants related to LLSD’s purported trademark. These discussions to resolve the dispute included discussions and communications with Ms. Archuleta-Staehlin, on behalf of Superintendent Sanders, as well as Defendants’ counsel, hired by the New Mexico Public Schools Insurance Authority, and acting Superintendent Walter Gibson. These discussions have been unavailing, and Defendants continue to threaten that they will use the purported trademark of “Los Lunas Schools” to force Ms. Tachias and Ms. Dereta to “refrain from any and all further acts of infringement including removal of the unauthorized social media account on Facebook.” Ex. 3, at 1.

55. As of January 21, 2021, upon information and belief, LLSD and/or the Board have issued cease and desist letters in attempts to enforce their purported trademark of “LOS LUNAS

SCHOOLS” to only Ms. Tachias and Ms. Dereta in the attempt to demand that they remove the Los Lunas School District Parent Discussion Page.

56. As of January 21, 2021, LLSD has no public guidance for how any person may license the “Los Lunas Schools” mark or any guidelines that advise any person how to use the “Los Lunas Schools” mark. The LLSD Board has in place Policy 6.18 “Policy on Intellectual Property.” *6.18 Policy on Intellectual Property*, Los Lunas Schools, <https://www.llschools.net/cms/one.aspx?portalId=94548&pageId=631766> (last visited Jan. 21, 2021). The “Policy on Intellectual Property,” however, which was approved in 1997 and last revised in 2008, *see id.*, does not address use of any trademark. The failure of LLSD and the Board to provide any guidance for permissible use of the “LOS LUNAS SCHOOLS” mark stands in stark contrast to other public school boards in New Mexico, and, for example, the University of New Mexico, which educational institutions have been issued trademarks. *E.g.*, *APS Logo Trademark*, Albuquerque Public Schools, <https://www.aps.edu/graphics/aps-logos> (last visited Jan. 21, 2021); *UNM Brand Guidelines: Trademarks & Licensing*, The University of New Mexico, <https://brand.unm.edu/logos/licensing-merchandise.html> (last visited Jan. 21, 2021). The failure of LLSD and the Board to advise the public, LLSD community, and others how to lawfully license or use the “LOS LUNAS SCHOOLS” mark chills speech of the public and the LLSD community, who, like Ms. Tachias and Ms. Dereta, are left with the fear that using “Los Lunas Schools,” – or under the assertions and contentions in the cease-and-desist letters issued to Ms. Tachias and Ms. Dereta – “Los Lunas Public Schools,” will subject them to similar attempts by LLSD to wrongfully attempt to enforce its trademark of “Los Lunas Schools.”

57. As of January 13, 2021, the first result that a person who searches “los lunas schools” on Facebook sees is the “Los Lunas Schools” page, which has a “verified badge” –  –

next to the page's name: "Los Lunas Schools."⁴ The Los Lunas School District Parent Discussion Page is found 11 results below, after two sponsored search results, after the "Sandoval County Emergency Management" page, and after a series of "Photos" related to the search. The Los Lunas School District Parent Discussion Page does not contain a verified badge next to its name.

58. As of January 21, 2021, the Los Lunas School District Parent Discussion Page had approximately 3,200 members. This membership in a private social networking service page shows the Los Lunas School District Parent Discussion Page's importance to provide a space for LLSD stakeholders and community members to exercise their First Amendment free-speech rights related to the LLSD public school district.

CLAIM FOR RELIEF

COUNT 1

42 U.S.C. § 1983, U.S. Const. Amend. I, XIV

Enforcement of LLSD's trademark as LLSD seeks violates the First and Fourteenth Amendments as applied to Ms. Tachias and Ms. Dereta

59. Ms. Tachias and Ms. Dereta reallege and incorporate by reference all other paragraphs of this Complaint as though fully set forth herein.

60. The enforcement of Defendants' trademark to forever prohibit Ms. Tachias and Ms. Dereta, and other community members, from engaging in speech on the Los Lunas Facebook Parent Discussion Page targets core political speech that is at the heart of First Amendment protections. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340–41, 366 (2010). "Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Id.* at 339.

⁴ According to Facebook: "If you see a verified badge  on a Page or profile, it means that Facebook confirmed that this is the authentic Page or profile for this public figure, media company or brand. Keep in mind that verified badges are for well-known, often searched Pages and profiles." *What is a verified Page or profile?*, Facebook (last visited Jan. 13, 2021), available at <https://www.facebook.com/help/196050490547892>.

61. Defendants' attempt to enforce Trademark Reg. No. 5,798,193 for "Los Lunas Schools" against Ms. Tachias and Ms. Dereta violates the First Amendment.

62. The use of the online social networking site the Los Lunas School District Parent Discussion Page, including the community's discussion on that page, Ms. Tachias's and Ms. Dereta's posts and comments on that page, and Ms. Tachias's and Ms. Dereta's administration of that page, are and were all protected activities under the First Amendment to the United States Constitution.

63. Defendants initially retaliated against these protected activities by directing Ms. Tachias and Ms. Dereta to take down the Los Lunas School District Parent Discussion Page immediately, and threatening that, if Ms. Tachias and Ms. Dereta refused to take down the page, LLSD would maintain a list of its employees who were members – implicitly threatening retaliation against any such LLSD-employee members of the page.

64. After referring to the Los Lunas School District Parent Discussion Page as 'THE HATERS PAGE', Defendants then retaliated against these protected activities by writing a letter to the parents of all LLSD students, trademarking "Los Lunas Schools," and sending cease-and-desist letters to Ms. Tachias and Ms. Dereta demanding that they "refrain from any and all further acts of infringement including removal of the unauthorized social media account on Facebook." Ex. 3, at 1.

65. Defendants' retaliatory actions caused Ms. Tachias and Ms. Dereta to suffer an injury that would chill a person of ordinary firmness from continuing to engage in their protected activities, including use of the online social networking site the Los Lunas School District Parent Discussion Page, their administration of that page, and the posts and comments on that page.

66. Defendants' justification for impeding Ms. Tachias's and Ms. Dereta's, as well as others', First Amendment rights are not sufficiently compelling to justify forever chilling all speech and expressive activity of Ms. Tachias's and Ms. Dereta's and members of the Los Lunas School District Parent Discussion Page. Consequently, the only reasonable purpose from Defendants' conduct is that they trademarked "Los Lunas Schools" and sent the cease-and-desist letters to Ms. Tachias and Ms. Dereta as a form of content- and viewpoint-based discrimination in retaliation for Ms. Tachias's and Ms. Dereta's (and others') exercise of their protected First Amendment activity.

67. As a result of Defendants' actions, Ms. Tachias and Ms. Dereta have suffered and continue to suffer irreparable harm, including, but not limited to, emotional and psychological harm.

68. Additionally, the actions of Defendants Sanders, Smith, and Frank Otero to retaliate against Ms. Tachias and Ms. Dereta for Ms. Tachias's and Ms. Dereta's protected activities intentionally or maliciously violated Ms. Tachias's and Ms. Dereta's constitutional rights, were done with an evil motive, and/or were done in indifference to or a reckless disregard for Ms. Tachias's and Ms. Dereta's constitutional rights; Ms. Tachias and Ms. Dereta, therefore, are entitled to punitive damages against those Defendants.

69. Absent relief from this Court, Defendants' threatened enforcement of its trademark on Ms. Tachias and Ms. Dereta, without justification, will continue to chill protected speech and association and cause irreparable harm.

PRAYER FOR RELIEF

Ms. Tachias and Ms. Dereta respectfully request that this Court:

A. Preliminarily and permanently enjoin Defendants from requiring or purporting to require Ms. Tachias and Ms. Dereta to cease to administer the Los Lunas School District Parent

Discussion Page and from threatening or imposing that Ms. Tachias and Ms. Dereta “refrain from any and all further acts of infringement including removal of the unauthorized social media account on Facebook.” Ex. 3, at 1;

B. Declare under the authority granted to this Court by 28 U.S.C. § 2201 that enforcement of the “Los Lunas Schools” Trademark as applied to Ms. Tachias and Ms. Dereta is unconstitutional under the First and Fourteenth Amendments;

C. Award Ms. Tachias and Ms. Dereta their costs, disbursements, and reasonable attorneys’ fees incurred in bringing this action pursuant to 42 U.S.C. § 1988;

D. Award Ms. Tachias and Ms. Dereta general damages, for an amount to be determined at trial;

E. Award Ms. Tachias and Ms. Dereta punitive damages, for an amount to be determined at trial; and

F. Grant such other or further relief as the Court deems just and proper.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF NEW MEXICO FOUNDATION

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– and –

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